



ANNEXURE B

OPT OUT NOTICE FEDERAL COURT OF AUSTRALIA

QUINTIS CLASS ACTIONS

IMPORTANT: This Notice contains information about your legal rights.

A. ABOUT THIS NOTICE

14. Why are you receiving this Notice?

The Federal Court has ordered that this Notice be provided to and published for the information of persons who are likely to be group members in both of two class actions relating to Quintis Ltd (**Quintis**). You have been identified as a potential group member who has previously registered an interest in both class actions, or you have previously signed a cost agreement with the solicitors for the Excel Texel Class Action and a funding agreement with the litigation funder for the Davis Class Action. If you have not previously registered with both class actions, or previously signed a cost agreement and a funding agreement in relation to both class actions, there is a separate notice that applies to you, which you should read carefully.

Please read this Notice carefully. Any questions you have concerning the matters contained in this Notice should NOT be directed to the Court. If there is anything in it that you do not understand or you have questions, you should contact the independent expert identified in this notice, or obtain your own legal advice.

There are two class actions seeking compensation for Quintis investors (the Excel Texel Class Action and the Davis Class Action, both defined below). The Excel Texel Class Action is against Quintis and Frank Cullity Wilson (**Wilson**). The Davis Class Action is against Quintis, Mr Wilson, and Ernst & Young (**EY**), Quintis' auditor which audited Quintis' 2015 and 2016 financial statements. Both class actions are being conducted in the Federal Court of Australia. These class actions may affect your rights.

15. Why is this Notice important?

This Notice contains important information about the background to the Quintis Class Actions (as defined below). In particular, it tells you about your right to choose which of the two class actions to participate in, or to opt out of both.

The deadline for making your decision is 6 AUGUST 2019. You must choose to opt out of either the Excel Texel Class Action or Davis Class Action (or opt out of both class actions) by the deadline.

16. What is a class action?



- (a) A "class action" is an action that is brought by one or more persons (the **Applicants**) on their own behalf and on behalf of a group of people (**Group Members**) against other persons (the **Respondents**) where the Applicants and the Group Members have similar claims against the Respondents.
- (b) The Respondents may make its own legal claims against others (**cross-respondents**) for the court to decide alongside a class action.
- (c) Group Members are eligible to share the proceeds of the litigation, and are otherwise bound by any outcome reached in the class action, unless they **opt out** of the proceeding.
- (d) A binding result can happen in two ways: either by a judgment following a trial, or by a settlement which might happen at any time. If there is a judgment or a settlement of a class action, group members will not be able to pursue the same claims and may not be able to pursue similar or related claims against the respondents in other legal proceedings. Group Members should note that in a:
 - (i) **judgment** following trial, the Court will decide factual and legal issues common to group members' legal claims. Those decisions will bind the Applicants, group members and the Respondents unless successfully appealed. Importantly, if other legal claims are brought between a group member and the respondents, it is likely that neither of them will be permitted to raise arguments in that proceeding which are inconsistent with a factual or legal issue decided in the class action.
 - (ii) **settlement** of a class action, where the settlement provides for compensation to group members, it may extinguish all rights to compensation which a group member might have against the respondents which arise in any way out of the events or transactions which are the subject-matter of the class action.
- (e) A settlement agreement which includes cross-respondents might extinguish group members' rights to compensation against those cross-respondents.
- (f) If you consider that you have claims against Quintis, Wilson or the cross-respondents in the class action, including Quintis' former auditors Ernst & Young, which are based on your individual circumstances or which are additional to the claims described in the class action, then it is important that you seek independent legal advice about the potential binding effects of the class action before the deadline for opting out.

17. What is an 'Opt Out'?

In a class action the Applicant does not need to seek the consent of Group Members to commence a class action on their behalf or to identify a specific Group Member. However, Group Members can cease to be Group Members by opting out of the class action. **Unless you opt out**, you will be bound by the outcome of the class action. This is explained further below.



B. INFORMATION ABOUT THE CLASS ACTIONS

18. What are the class actions?

- (a) There are two class actions being conducted by two different firms of solicitors, Gadens and Piper Alderman, in relation to Quintis securities:
- (i) *Excel Texel Pty Ltd (ACN 082 642 742) (as trustee for the Mandex Family Trust) & Andrew John Wyma v Quintis Ltd (Subject to Deed of Company Arrangement) (ACN 092 200 854) & Anor (NSD 1983 of 2017)*, conducted by Gadens (**Excel Texel Class Action**). The respondents in the Excel Texel Class Action are Quintis and Mr Wilson;
 - (ii) *Geoffrey Peter Davis & Anor v Quintis Limited (Subject to Deed of Company Arrangement) (ACN 092 200 854) & Ors (NSD 862 of 2018)*, conducted by Piper Alderman (**Davis Class Action**). The respondents in the Davis Class Action are Quintis, Mr Wilson, and EY.
- (b) The class actions are being case managed together in the Federal Court of Australia and are brought on behalf of all persons who are Group Members as defined in each of the class actions.

19. What are the class actions about?

Excel Texel Action

- (a) On 13 November 2017 a class action was commenced in the Federal Court of Australia (**Court**) against Quintis and Wilson by Excel Texel.
- (b) At the time of filing Excel Texel's claim, Quintis was also the subject of another class action in the Court brought on behalf of Mr Andrew John Wyma, funded by JustKapital Litigation Pty Limited in relation to similar facts (**Wyma Class Action**).
- (c) In the interests of the efficient prosecution of the claims against Quintis and Mr Wilson, Excel Texel and Mr Wyma and their respective funders agreed to consolidate the Wyma Class Action into the Excel Texel Class Action. Consolidation occurred by way of Court orders on 10 December 2018.
- (d) In summary, Excel Texel and Mr Wyma allege that in the period from 1 July 2015 to 10 May 2017 (inclusive):
- (i) Quintis and Mr Wilson made a series of representations, referred to as the "*Pre-sold Representations*" which, coupled with the failure to correct the representations, were misleading or deceptive and constituted a breach of sections 1041H(1) of the *Corporations Act 2001 (Corporations Act)* and/or section 12DA of the *Australian Securities and Investments Commission Act 2001 (Cth)*. The Pre-sold Representations related to purported multi-year agreements to buyers in



China and India/the Middle East as well as earnings before interest, tax, depreciation and amortisation (**EBITDA**) in the financial year 2017 (**FY17**) increasing by at least 25%;

- (ii) Quintis and Mr Wilson engaged in “*Pre-sold Continuous Disclosure Contraventions*”, which constituted a breach of sections 674(2) and 674(2A) of the *Corporations Act*. The Pre-Sold Continuous Disclosure Contraventions arose, essentially, by reason of their failure to correct the Pre-sold Representations; and
- (iii) Quintis and Mr Wilson engaged in the “*Galderma Continuous Disclosure Contraventions*”, which constituted a breach of sections 674(2) and 674(2A) of the *Corporations Act*. The Galderma Continuous Disclosure Contraventions arose, among other things, by reason of their failure to advise that:
 - (A) Quintis had ceased to supply Indian sandalwood oil to Galderma from June 2015;
 - (B) on 30 November 2016 Galderma informed Santalis of its intention to terminate the Galderma Supply Agreement; and
 - (C) on or around 16 December 2016, Santalis and Galderma entered into an agreement that terminated the Galderma Supply Agreement from 1 January 2017.
- (e) Excel Texel and Mr Wyma are represented by Gadens in the Excel Texel Class Action, and the proceeding is being funded by Ironbark Funding Navy Pty Ltd as trustee for the Ironbark Funding Navy Unit Trust (**Ironbark**). You can obtain a copy of Ironbark's Litigating Funding Agreement by contacting Simon Theodore or by email simon.theodore@gadens.com.
- (f) Quintis and Mr Wilson each deny the allegations made against them and are defending the proceedings.

Davis Action

- (g) On 23 May 2018, a class action was commenced in the Federal Court of Australia (**Court**) against Quintis, Wilson and EY by Geoffrey Peter Davis and Geoffrey William Davis (**Davis Applicants**).
- (h) In summary, the Davis Applicants allege that in the period commencing on 31 August 2015 and concluding on 15 May 2017 (inclusive):
 - (i) Quintis and Mr Wilson made false or misleading statements and engaged in misleading or deceptive conduct within the meaning of sections 1041E and 1041H of the *Corporations Act* by overstating in the FY15 and FY16 Financial Reports the value of Quintis' biological assets, its profit attributable to its recognition of certain establishment fees as revenue, and its recognition of optional annual fees as



intangible assets. This had the effect of materially overstating Quintis' assets and revenue.

- (ii) EY made false or misleading statements and engaged in misleading or deceptive conduct within the meaning of sections 1041E and 1041H of the Corporations Act by issuing its FY15 and FY16 Audit Opinions and representing that Quintis' FY15 and FY16 Financial Reports did not materially misstate the value of Quintis' biological assets, its profit attributable to its recognition of certain establishment fees as revenue, and its recognition of optional annual fees as intangible assets, which had the effect of overstating Quintis' assets and profits.
 - (iii) The Davis Applicants allege that, if Quintis' FY15 and FY16 Financial Reports had been properly audited, the real value of its shares would have been a fraction of what the market attributed to it. The Davis Applicants claim that they and the Group Members suffered loss as a result of these alleged contraventions because if the alleged misrepresentations had not been made, and the true value of Quintis' securities had been known, they either would not have purchased ordinary shares in Quintis or would have paid much less for them.
- (i) The Davis Applicants are represented by Piper Alderman, and the proceeding is being funded by LCM Operations Pty Ltd (ACN 616 451 033) (**LCM Operations**). You can obtain a copy of LCM Operations Funding Agreement by emailing Piper Alderman at qinshareholder@piperalderman.com.au.
 - (j) Quintis, Mr Wilson and EY each deny the allegations made against them and are defending the proceedings.

20. Are you a Group Member?

You may be a group member in both the Excel Texel proceeding and the Davis proceeding, depending on when you bought shares.

7A. Are you an Excel Texel Group Member?

You are a Group Member in the Excel Texel Class Action if you:

- (a) purchased ordinary shares in Quintis during the period from 1 July 2015 to 10 May 2017 (both dates inclusive) (**Excel Texel Period**); and
- (b) suffered loss or damage by or resulting from the conduct of Quintis and/or Mr Wilson, as alleged in the Further Amended Statement of Claim; and
- (c) are not any of the following:
 - (i) directors or officers, or a close associate of Quintis;
 - (ii) a related party of Quintis;
 - (iii) a related body corporate of Quintis;



- (iv) an associated entity of Quintis; or
- (v) a Justice, Registrar, District Registrar or Deputy District Registrar of the High Court of Australia or the Federal Court of Australia.

7B. Are you a Davis Group Member?

You are a Group Member in the Davis Class Action if you:

- (d) acquired an interest in ordinary shares in Quintis in the period commencing on 31 August 2015 and concluding on 15 May 2017 (**Davis Period**); and
- (e) suffered loss or damage by, or which resulted from, the conduct of Quintis, Wilson and/or EY as alleged in the Further Amended Statement of Claim; and
- (f) are not any of the following:
 - (i) directors or officers, or a close associate of Quintis;
 - (ii) a related party of Quintis;
 - (iii) a related body corporate of Quintis;
 - (iv) an associated entity of Quintis; or
 - (v) a Justice, Registrar, District Registrar or Deputy District Registrar of the High Court of Australia or the Federal Court of Australia.

If you are not a Group Member in either the Excel Texel Class Action or Davis Class Action, you may disregard this Notice. If you are a Group Member, you should read this Notice carefully as it will affect your rights. If you are unsure whether you are a Group Member, you should contact the independent expert (see section 9 below) or seek your own legal advice without delay.

7C. What if you are a Group Member in both the Excel Texel Class Action and the Davis Class Action and have signed a retainer with Gadens as well as a funding agreement with LCM Operations, or registered an interest in both class actions?

- (g) If you purchased any Quintis shares:
 - (i) between 31 August 2015 and 10 May 2017 (**Overlap Period**); or
 - (ii) did not purchase any Quintis shares during the Overlap Period but did purchase Quintis shares between 1 July 2015 and 30 August 2015 **and also** between 11 May 2017 and 15 May 2017;

you are a member of both the Excel Texel Class Action and the Davis Class Action. (Note: if you *only* purchased Quintis shares between 1 July 2015 and 30 August 2015 you are only a group member in the Excel Texel Class Action and not in the Davis Class Action).



- (h) If you are a Group Member of both class actions and have:
 - (i) Signed a retainer with Gadens in relation to the Excel Texel Class Action as well as a funding agreement with LCM Operations in relation to the Davis Class Action, or
 - (ii) Registered an interest in both the Excel Texel Class Action (including if you previously registered an interest in the Wyma Class Action (NSD 1568/2017) which has been consolidated with the Excel Texel Class Action) and the Davis Class Action,

The Court has determined that you cannot remain a group member of both class actions and must choose to opt out of one of the class actions, or both, by 6 August 2019.

- (i) If sub-paragraphs (a)(i) or (ii) above do not apply to you, then you may disregard this notice. The Court has approved a separate notice that explains your rights.
- (j) If sub-paragraphs (a)(i) or (ii) apply to you, the following parts of this notice explains the choice you must make and your options for doing so.

21. Will you be liable for legal costs if you remain a group member in either class action?

You will not become liable for any legal costs simply by remaining as a group member in either class action until the Court has held the trial to decide the issues common to group members or the matter is settled. However:

- (a) If you choose to remain in either of the class actions, and the outcome of the initial trial means that preparation or finalisation of your personal claim requires work to be done in relation to issues that are specific to your claim, you can engage lawyers to do that work for you, and you may have to pay for that work.
- (b) If any compensation becomes payable to you as a result of any order, judgment or settlement in the class action you choose to participate in, the Court may make an order that some of that compensation be used to help pay a share of the costs which are incurred by the Applicants in that class action which are not able to be recovered from Quintis. These costs will be subject to Court approval.
- (c) Class actions are often settled out of court. If this occurs in the class action you choose to participate in, you may be able to claim from the settlement amount without retaining a lawyer. In that event, the Court may nonetheless require you to contribute to the legal costs in the class action you participate in from your compensation.

C. CHOOSING BETWEEN THE CLASS ACTIONS



22. How do you decide which class action to participate in?

- (a) There are differences between the two class actions. The differences in the way in which the claims are made could affect the outcome of each case and the amount recovered. The differences in the way in which the claims are funded and in their costs could affect the proportion of any recovery that is actually shared by group members in the relevant class action if the claim is successful.
- (b) A description of the differences in the claims is given in section 10 below. A description of the differences in funding and current costs is given in section 11 below.
- (c) The Court has appointed an independent expert, Mr Casper Conde of Counsel, to provide legal advice to members in relation to matters arising under the notice. Mr Conde is an experienced lawyer who will be scheduling a series of meetings and telephone conferences with group members who contact him/her for further information to assist with their decision.
- (d) The independent expert's details are as follows:

Mr Caspar Conde

T: +61 2 9151 2058
E: conde@newchambers.com.au
A: Level 34, 126 Phillip Street, Sydney NSW 2000
- (e) If you would like to receive advice from Mr Conde, please contact him as soon as possible.
- (f) This expert is wholly independent of the applicants in both class actions, and is also independent of Gadens and Piper Alderman. The costs of the independent expert are shared by the applicants in both class actions.

23. What are the differences between the claims?

- (a) The Excel Texel Class Action and the Davis Class Action are not the same, although both seek compensation under provisions of the *Corporations Act* from Quintis and Mr Wilson for contraventions of the Act. Key differences further to those set out in section 6 above are as follows:
 - (i) The Excel Texel Class Action concerns shares purchased in the Excel Texel Period;
 - (ii) The Davis Class Action concerns shares purchased in the Davis Period;
 - (iii) The Davis Class Action joins the auditors of Quintis, EY, as a Third Respondent;



- (iv) The subject matter of the claims made in the Davis Class Action are substantially different to the claims made in the Excel Texel Class Action.
- (b) The differences between the class actions mean that it is possible that one may fail while the other succeeds.
- (c) The parties in the two class actions have provided the independent expert referred to at section 9 above with a 'Frequently Asked Questions' document to assist the independent expert in advising group members on matters such as the respondents' insurance position, potential recoverability, specific causes of action and case theories of both class actions, as well as the bases on which the respondents defend the claims.
- (d) If you would like to understand the differences between the two class actions in more detail, please contact the independent expert.

24. How will legal costs be paid?

If you have signed a cost agreement with Gadens and a funding agreement with LCM

- (a) If you have signed both a cost agreement with Gadens and a funding agreement with LCM, your liability to pay legal costs will be governed by those respective agreements. Following the opt out process described in this notice, and the choice you must make about which class action to opt out of and which to remain a member of (if any), you will only continue to be bound by the cost or funding agreement relating to the class action you have not opted out of.
- (b) If you have registered an interest in both class actions, but have not signed a cost agreement with Gadens and a funding agreement with LCM Operations, then the following funding arrangements may apply to you depending on which (if any) class action you wish to remain a group member of.

Excel Texel Class Action

- (c) The Applicants in the Excel Texel Proceeding have entered into a litigation funding agreement with Ironbark.
- (d) The Court is yet to make a Common Fund Order in the Excel Texel Proceedings, but the Excel Texel Parties will in due course seek orders which provide that in the event that the action proceeds to Trial and the Excel Texel Applicants are successful against Quintis and/or Mr Wilson or the Excel Texel Class Action is the subject of a settlement approved by the Court, Ironbark would be entitled to recover:
 - (i) an amount equal to Ironbark's costs incurred in the funding of the class action; and



- (ii) a reasonable proportion of the recovery of Group Members' claims at a rate to be approved by the Court.

Davis Class Action

- (e) The Applicants in the Davis Proceeding have entered into a litigation funding agreement with LCM.
- (f) The Court is yet to make a Common Fund Order in the Davis Proceedings, but the Davis Parties will in due course seek orders which provide that in the event that the action proceeds to Trial and the Davis Applicants are successful against Quintis and/or Mr Wilson and/or EY or the Davis Class Action is the subject of a settlement approved by the Court, LCM would be entitled to recover:
 - (i) the costs and expenses of the proceeding; and
 - (ii) a reasonable proportion of the recovery of group members' claims at a rate (**Funding Commission Rate**) to be determined/approved by the Court, at a time after the service of expert evidence in the Proceedings relating to loss.

25. What do you need to do?

As set out above, you need to take one of the following options.

Option 1: Opt out of the Excel Texel Class Action and remain in the Davis Class Action

- (a) To take this option, you need to complete the Opt Out Form by ticking “I wish to opt out of the Excel Texel Class Action” **only**, and return it to the Court.
- (b) If you select this option you will cease to be a group member of the Excel Texel Class Action. You will, after opting out of the Excel Texel Class Action, remain a group member of the Davis Class Action only.
- (c) If the Davis Class Action is successful, you may be entitled to share in the benefit of any order, judgment or settlement in favour of the applicant and group members. Your rights to bring your own claim may be affected as explained in section 3 of this notice.
- (d) If you select this option, you will not be affected by any orders, judgment or settlement in the Excel Texel Class Action, and will likely not receive any compensation if the Davis Class Action fails, but the Excel Texel Class Action succeeds.

Option 2: Opt out of the Davis Class Action and remain in the Excel Texel Class Action



- (e) To take this option, you need to complete the Opt Out Form by ticking “I wish to opt out of the Davis Class Action” **only**, and return it to the Court.
- (f) If you select this option you will cease to be a group member of the Davis Class Action. You will, after opting out of the Davis Class Action, remain a group member of the Excel Texel Class Action only.
- (g) If the Excel Texel Class Action is successful, you may be entitled to share in the benefit of any order, judgment or settlement in favour of the applicant and group members. Your rights to bring your own claim may be affected as explained in section 3 of this notice.
- (h) If you select this option, you will not be affected by any orders, judgment or settlement in the Davis Class Action, and will likely not receive any compensation if the Excel Texel Class Action fails, but the Davis Class Action succeeds.

Option 3: Opt out of both class actions

- (i) If you do not wish to be a group member of either class action, please complete the attached Opt Out Form by ticking **both** “I wish to opt out of the Excel Texel Class Action” and “I wish to opt out of the Davis Class Action”, and return it to the Court.
- (j) If you select this option, you will cease to be a group member of both the Excel Texel and Davis Class Actions, and you will not be affected by any orders made in either proceeding. You will not be bound by or entitled to share in the benefit of any order, judgment or settlement obtained in the Excel Texel Class Action or the Davis Class Action.
- (k) Your rights to bring your own claim will not be affected by the class actions, and you will be at liberty to bring your own legal claim against Quintis, Mr Wilson or EY provided that you issue court proceedings within the time limit applicable to your claim. If you wish to bring your own claim, you should seek your own legal advice about your claim and the applicable time limit before opting out.

26. When do you need to make your decision?

You must decide what to do BEFORE 4:00pm on 6 AUGUST 2019.

The Court has ordered that you must take one of the three opt out options set out in section 12 above, and choose which (if either) of the two class actions to remain a group member of. This must be done before the deadline set out above.

D. WHERE TO GET MORE INFORMATION

You may inspect copies of the key documents filed in connection with the Excel Texel Class Action:



- (a) during business hours at the office of Gadens (Level 25, 600 Bourke Street, Melbourne, Victoria 3000 and/or Level 20, MLC Centre, 19 Martin Place, Sydney, NSW, Australia 2000), by appointment;
- (b) on the website of Gadens (<https://classactions.gadens.com/Actions/Details/8>);
- (c) on the Federal Court website (<http://www.fedcourt.gov.au>); or
- (d) at a District Registry of the Federal Court in Melbourne, Sydney, Canberra, Brisbane, Perth, Adelaide, Hobart or Darwin.

You may inspect copies of the key documents filed in connection with the Davis Class Action:

- (e) during business hours at the office of Piper Alderman (Level 23, Governor Macquarie Tower, 1 Farrer Place, Sydney, NSW, Australia or otherwise at Piper Alderman's offices located in Adelaide, Brisbane or Melbourne), by appointment;
- (f) on the website of Piper Alderman;
- (g) on the Federal Court website (<http://www.fedcourt.gov.au>); or
- (h) at a District Registry of the Federal Court in Melbourne, Sydney, Canberra, Brisbane, Perth, Adelaide, Hobart or Darwin.

Any questions you have concerning the matters contained in this Notice should not be directed to the Court, but you should seek legal advice.



Dual Registrant Opt Out Notice

Federal Court of Australia

District Registry: New South Wales

Division: General

NSD1983/2017

EXCEL TEXEL PTY LTD (ACN 082 642 742) (as trustee for the Mandex Family Trust) AND ANOR

Applicants

QUINTIS LIMITED (ACN 092 200 854) and another named in the schedule

Respondents

NSD862/2018

GEOFFREY PETER DAVIS AND ANOR

Applicants

QUINTIS LIMITED (ACN 092 200 854) and another named in the schedule

Respondents

To: Federal Court of Australia
New South Wales District Registry
Law Courts Building
184 Phillip Street
Queens Square
SYDNEY NSW 2000

[Name of group member], a group member in both of the above representative proceedings, gives notice under section 33J of the *Federal Court of Australia Act 1976*, that [Name of group member] is opting out of the representative proceedings.

I wish to opt out of the **Excel Texel Class Action**

I wish to opt out of the **Davis Class Action**,

Date: [eg 19 June 20..]

.....
Signed by [Name]

[Insert capacity eg group member / Lawyer
for the group member]